IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 889 OF 2003

Somnath Kaluram Kalbhor..... .. Appellant.

Versus

Kailash Kaluram Kalbhor. .. ... Respondent.

Mr. S. N. Chandrachud for the Appellant.

None for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 17TH NOVEMBER, 2005.

P.C.:

Heard learned Counsel for the appellant.

2. Both the Courts below have concurrently came to the conclusion and rejected the plea of the plaintiff, appellant herein, that they are the owners and in possession of the suit properties mentioned in the plaint along with the properties mentioned in the gift deed dated 5th November, 1996 and further that the defendant obstructed their possession on 12th April, 1999. That resulted in the present second appeal.

3. Both the courts below have considered the issues and rightly came to the conclusion that the possession of the plaintiff - appellant should not be treated as lawful and should not be protected since the Plaintiff failed to prove his title based on the deeds and further unable to prove his case as prayed that the gift deed executed by appellant / plaintiff's grand mother in favour of respondent was illegal and not binding upon him. The Courts below, therefore, rejected the plea for declaration that the gift deed dated 5th November, 1996 was null and void.

4. Both the courts below came to the conclusion that the plaintiff failed to prove that they are the owners and in possession of the property mentioned in the gift deed dated 5th November, 1996.

5. Learned Counsel further submitted that the possession of the property in question on the date ;of filing of the suit cannot be said to be unlawful as they are in possession since 1980. The appellant - plaintiff himself had filed the present suit for protection of his possession and declaration. Based on which both the courts came to the above conclusion in so far as grant of injunction or protection of

possession. In this background, I see there is no substantial question of law raised as such in this second appeal.

6. Second appeal is, therefore, rejected.

Sd/-

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1350 OF 2003

IN

SECOND APPEAL NO. 889 OF 2003

Somnath Kaluram Kalbhor..... .. Appellant.
Versus
Kailash Kaluram Kalbhor. .. ... Respondent.

Mr. S. N. Chandrachud for the Appellant.
None for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 17TH NOVEMBER, 2005.

P.C.:

In view of the dismissal of the second appeal itself, no order on this civil application.

Sd/-

(ANOOP V. MOHTA, J.)